



CERTIFIED MAIL RETURN RECEIPT REQUESTED

Pat Karney, Director
Metropolitan Sewer District of Greater Cincinnati
1600 Gest Street
Cincinnati, OH 45204

12/18/2001

The Hon. John S. Dowlin
The Hon. Tom Neyer, Jr.
The Hon. Todd Portune
138 East Court Street, Room 603
Cincinnati, OH 45202

Mayor Charlie Luken
801 Plum Street, Room 150
Cincinnati, OH 45202

Dear Commissioners, Mayor Luken and Mr. Karney:

The Sierra Club is a nonprofit corporation organized and existing under the laws of California, with its principal place of business in San Francisco, California. The Club is a national membership organization, with more than 625,000 members residing throughout the United States and the State of Ohio, in particular. The Sierra Club Miami Group has 3971 members who live and work in Southwest Ohio and, the Club has over 18,000 members statewide. Sierra Club's mission is to protect and enhance the quality of the natural and human environment. Its activities and the activities of its members include: outdoor recreation, public education, advocacy, and litigation to enforce environmental laws. Members of the Sierra Club use the Little Miami River and the Mill Creek for recreational and other purposes. Some of its members walk or hike along the banks of these two waterways; others canoe on them. Marilyn Wall is the Ohio Chapter Conservation Chair, and a member of the Miami Group of the Sierra Club. Personally, she uses both the Little Miami River and Mill Creek for recreational purposes, including, but not limited to canoeing. Along with the Sierra Club she is sending you this Notice of Intent to file a Citizen Suit pursuant to Section 505 (a) (1) of the federal Clean Water Act, 33 USC Sec. 1365 (a) (1). This notice is being served pursuant to the Prior Notice of Citizen Suits regulation, 40 CFR Sec. 135 on the parties specified on the attached service list.

After the statutory 60-day Notice period, it is the intent of the Sierra Club and Marilyn Wall to commence a legal action in the United States District Court for the Southern District of Ohio against the Metropolitan Sewer District (MSD) of Greater Cincinnati, the City of Cincinnati and Hamilton County for violations of the federal Clean Water Act.

On a monthly basis for at least the past 5 years to the present, the sanitary sewer conveyance systems owned and operated by the Metropolitan Sewer District, the City of Cincinnati and/or Hamilton County have and continue to overflow into the Mill Creek and the Little Miami River

(both navigable waters of the United States) from specific openings in the sewer systems. These openings are known as Sanitary Sewer Overflows or SSOs. Such raw sewage overflows are a direct violation of federal Clean Water Act, a threat to public health and safety and cause injury in fact to the recreational and aesthetic interests of the Sierra Club Miami Group, its members, and Marilyn Wall, individually.

The MSD is required to keep records of the date, location and duration of each unpermitted sanitary sewer overflow. MSD is also required to provide that information to the Ohio Environmental Protection Agency (OEPA). The specific information of each and every SSO on the Mill Creek and Little Miami River is in the possession of the MSD, so it is on actual notice of each activity that constitutes violation of the Clean Water Act, the location of the violations, and the dates and the duration of the violations. Each monthly report from MSD to OEPA on sanitary sewer overflows dating back five-years from the date of this notice letter is specifically incorporated by reference, herein. This notice letter, however, is not limited by the MSD's written reports to OEPA. It is also meant to include any additional SSOs to the Little Miami River and/or the Mill Creek of which MSD has actual notice, but were not reported to OEPA, as required. It is the intent of the Club and Marilyn Wall to enforce and seek elimination of all SSOs into the Mill Creek and the Little Miami River, regardless of whether said SSO was properly recorded and notice of it sent to the Ohio EPA.

It is unlawful for the owner or operator of a sewer system to discharge sewage without a state or federal permit. 33 U.S.C. Sec. 1311 (a). At no time, up to and including the present, has MSD had a National Pollutant Discharge Elimination System Permit (NPDES) that permitted raw sewage overflows into the Mill Creek or Little Miami River or any other navigable waters of the United States. Because of the on-going and uncorrected SSO problems with the sewers in the Mill Creek and Little Miami River drainage basins, the unlawful and un-permitted discharges of raw sewage are likely to persist into the future. The Sierra Club and Marilyn Wall intend to seek injunctive relief and civil penalties against MSD, the City of Cincinnati and Hamilton County in order to obtain a permanent solution to this serious pollution of the nation's waterways. If you require additional information regarding this Notice, please contact the plaintiffs' undersigned counsel, directly.

Very truly yours,

BY: Marilyn Wall
Marilyn Wall

Counsel for Sierra Club and Marilyn Wall –

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SERVICE LIST

Service of Prior Notice of Citizen Suit Under the Clean Water Act Pursuant to 40 CFR Sec. 135

City of Cincinnati

Mayor Charlie Luken
801 Plum Street, Room 150
Cincinnati, OH 45202

Hamilton County

The Hon. John S. Dowlin
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Director, Metropolitan Sewer District

Pat Karney, Director
Metropolitan Sewer District of Greater Cincinnati
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